

**IN THE UNITED STATE DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION**

TRI STATE ADVANCED SURGERY
CENTER, LLC, GLENN A. CROSBY II, M.D.,
F.A.C.S., and MICHAEL HOOD, M.D.,

Plaintiffs

v.

HEALTH CHOICE, LLC, and
CIGNA HEALTHCARE OF TENNESSEE, INC.,

Defendants

Case No. 3:14-CV-00143-JM

CONNECTICUT GENERAL LIFE INSURANCE
COMPANY, CIGNA HEALTH AND LIFE
INSURANCE COMPANY, and CIGNA
HEALTHCARE OF TENNESSEE, INC.,

Counterclaim Plaintiffs

v.

SURGICAL CENTER DEVELOPMENT, INC.
d/b/a SURGCENTER DEVELOPMENT, and
TRI STATE ADVANCED SURGERY CENTER, LLC,

Counterclaim Defendants

JOINT MOTION TO AMEND SCHEDULING ORDER

COME NOW the parties, Tri State Advanced Surgery Center, LLC (“Tri State”), Surgical Center Development, Inc. (“SurgCenter”), Dr. Glenn A. Crosby, II and Dr. Michael Hood (collectively “Tri State Parties”); Cigna Healthcare of Tennessee, Inc., Connecticut General Life Insurance Company, and Cigna Health and Life Insurance Company (collectively “Cigna Parties”); and Health Choice LLC (“Health Choice”), and respectfully file this Joint

Motion to Amend Scheduling Order, including certain pleading and discovery deadlines and the trial setting of this matter.

In support of this Motion, the Parties would respectfully show as follows:

1. This case was originally filed by Tri State, Dr. Crosby and Dr. Hood alleging antitrust and state law claims against Cigna Healthcare of Tennessee, Inc. and Health Choice. (ECF 1). The Cigna Parties subsequently filed counterclaims pursuant to RICO, ERISA and state law against Tri State and against SurgCenter as a third-party defendant. (ECF 49).

2. On August 24, 2014, the Cigna Parties and Health Choice filed, respectively, motions pursuant to Fed. R. Civ. P. 12(b)(6) to dismiss the claims asserted against them by the Tri State Parties.

3. On October 10, 2014, Tri State and SurgCenter filed a motion pursuant to Fed. R. Civ. P. 12(b)(6) to dismiss the counter- or third-party claims filed against them by the Cigna Parties.

4. By Order dated April 16, 2015, the Court granted the motions to dismiss of the Cigna Parties and Health Choice as to the original complaint of Tri State and Drs. Crosby and Hood. (ECF 78). While the Court dismissed the federal-question claims asserted in the original complaint by Tri State, Dr. Crosby, and Dr. Hood with prejudice, it declined to exercise supplemental jurisdiction over the state law claims under 28 U.S.C. 1367(c) and thus dismissed those claims without prejudice. *Id.*

5. Approximately five months later, by Order dated September 30, 2015, the Court granted in part and denied in part the motion of Tri State and SurgCenter to dismiss the Cigna Parties' counter- and third-party claims. (ECF 61). More specifically, with the exception of one count arising under ERISA, the Court dismissed all of the Cigna Parties' claims under federal

law, but denied the motion to dismiss as it related to several of the state law claims alleged by the Cigna Parties.

6. On October 28, 2015, Tri State and SurgCenter answered the surviving counterclaims of the Cigna Parties. (ECF 101). Tri State and SurgCenter also filed new federal claims under ERISA, along with several state law counterclaims that largely parallel the state claims asserted in the original complaint against the Cigna Parties. *Id.* Tri State, Dr. Hood and Dr. Crosby also filed claims against Health Choice LLC that parallel the claims originally asserted in the original complaint.

7. Thus, while the orientation of the parties has changed from the alignment of the original complaint, the same parties and most of the same claims are now again before the Court. Health Choice, which had been dismissed without prejudice in the Court's April 16, 2015 order, is now again a party in the case.

8. Given the new federal and re-asserted state claims of the Tri State Parties alleged in their Answer, Counter-Counter and Third Party Claims filed on October 28, 2015 (ECF 101), and given that Health Choice has now again a party in the case, the Parties agree that an amendment to the present scheduling order and a short continuance of the trial date is necessary. Such extension will allow the Parties to (1) brief the motions to dismiss that the Cigna Parties and Health Choice expect to file, (2) conduct and complete all necessary discovery as to all claims, including the new and/or refiled state law claims asserted by the Tri State Parties, with the parties reserving their rights to object to such discovery, including the appropriate scope of discovery. (3) conduct and complete expert discovery related to all claims, and (4) prepare for trial efficiently and expeditiously.

9. Counsel for the parties have conferred and respectfully propose for the Court's

consideration the following revised dates and deadlines set forth below. These revised dates and deadlines would necessitate a continuance of the presently-scheduled trial date (July 18, 2016) to a new date that is approximately five to six months later, and no earlier than January 8, 2017.

Filing of initial motions to dismiss re counter-counter-claims and third party claims	December 4, 2015
Deadline for service of interrogatories and requests for production by/between Cigna and Plaintiffs/Counterclaim Defendants–	December 4, 2015
Deadline for service of interrogatories and requests for production by/between Health Choice and all Parties	January 4, 2016
Document production completed by/between Cigna and Plaintiffs/Counterclaim Defendants	February 5, 2016, with all parties to produce documents on a rolling basis
Document production completed by/between Health Choice and all Parties	March 31, 2016
Deposition deadline – fact witnesses (including third party discovery)	May 31, 2016
Expert reports due	June 29, 2016
Expert rebuttal reports due (if any)	July 29, 2016
Deposition deadline – expert witnesses	August 10, 2016
Dispositive Motions/ All motions other than motions in limine	September 9, 2016
Motions in limine	November 16, 2016
Status Report	October 12, 2016

Pretrial Disclosure Sheet	November 16, 2016
Evidentiary deposition designations	November 16, 2016
Counter-designations	November 25, 2016
Objections to depositions/video tapes to be used at trial	November 30, 2016
Responses to objections to depositions/video tapes to be used at trial	December 7, 2016
Trial Brief	December 14, 2016
Jury Instructions	December 14, 2016

Accordingly, the Parties respectfully request that the present scheduling order in this matter be amended as proposed hereinabove, and that the Court reset the trial of this matter (and all related pre-trial deadlines preceding such trial date) to a date convenient to the Court no earlier than January 8, 2017.

Dated: November 16, 2015

Respectfully submitted,

/s/ Douglas F. Halijan

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CERTIFICATE OF SERVICE

I, Douglas F. Halijan, hereby certify that on this 16th day of November, 2015, I filed the foregoing with the Clerk of the Court and that the ECF system will send notification of filing to all counsel of record.

/s/ Douglas F. Halijan